

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL J. BRODHEIM

Plaintiff,

No. CIV S-01-1738 GEB CMK P

vs.

MARGARITA PEREZ, et al.,

Defendants.

FINDINGS & RECOMMENDATIONS

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Plaintiff, a state prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983 alleging that the state has created an unwritten parole policy, and as a result of this policy, plaintiff has been found unsuitable for parole. On February 28, 2005, the undersigned filed findings and recommendations recommending that plaintiff's complaint be dismissed without prejudice and that plaintiff be granted leave to amend his complaint to bring it as a properly exhausted habeas petition.

On April 27, 2005, due to the objections filed by plaintiff, the undersigned vacated the February 28, 2005 findings and recommendations and ordered that plaintiff's amended complaint be dismissed with leave to amend within thirty days.

In light of the April 27, 2005 order, the undersigned recommends that the defendants' motion to dismiss be denied without prejudice.

1 These findings and recommendations are submitted to the United States District
2 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within ten days
3 after being served with these findings and recommendations, plaintiff may file written objections
4 with the court. The document should be captioned "Objections to Magistrate Judge's
5 Findings and Recommendations." Plaintiff is advised that failure to file objections within the
6 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d
7 1153 (9th Cir. 1991).

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10 DATED: May 6, 2005.

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13 **CRAIG M. KELLISON**
14 UNITED STATES MAGISTRATE JUDGE
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